

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF IDAHO**

<b>IN RE</b>	)	
	)	<b>Case No. 98-41370</b>
REED RAYMOND,	)	
	)	
<b>Debtor.</b>	)	
_____	)	
	)	
CITIBANK (SOUTH DAKOTA),	)	
N.A.,	)	<b>Adv. No. 98-6034</b>
	)	
<b>Plaintiff,</b>	)	<b>MEMORANDUM OF DECISION</b>
	)	<b>RE DEFENDANT'S AMENDED</b>
<b>vs.</b>	)	<b>MOTION TO COMPEL DISCOVERY</b>
	)	
REED RAYMOND,	)	
	)	
<b>Defendant.</b>	)	
_____	)	

Kim J. Trout, Boise, Idaho, for Plaintiff

Matthew Cleverley, Idaho Falls, Idaho, for Defendant.

**I. Background.**

Plaintiff Citibank initiated this Section 523(a) adversary proceeding against Defendant Reed Raymond on February 22, 1999. Defendant submitted interrogatories and requests for production of documents to Plaintiff on March 22, 1999. When no response was received, Defendant filed a Motion to Compel

Discovery on April 29, 1999. Plaintiff responded to Defendant's requests for discovery on May 3, 1999, but objected to several interrogatories and requests for documents. Defendant filed an Amended Motion to Compel Discovery on May 14, 1999. On May 19, 1999, after notice, a hearing was conducted on Defendant's Amended Motion. Plaintiff did not appear at the hearing, nor did it file any written response to the Amended Motion. After hearing, the matter was taken under advisement.

Plaintiff in this action asserts that Defendant's credit card debt is excepted from discharge in Defendant's Chapter 7 bankruptcy case because Defendant is guilty of "false pretenses, false representations and/or actual fraud" in using the charge account. 11 U.S.C. § 523(a)(2)(A). Plaintiff claims Defendant knew he had no ability to pay and did not intend to pay the account at the time he incurred the debts. Defendant denies Plaintiff's assertions and takes the position that Plaintiff's claims made against him are not substantially justified, entitling Defendant to recover attorney fees and costs from Plaintiff. 11 U.S.C. §523(d).

## **II. Facts.**

Plaintiff submitted responses to Defendant's discovery which included various objections, primarily asserting the information sought by Defendant is proprietary in nature and not subject to public dissemination. On this basis, Plaintiff objected to three interrogatories inquiring about: (1) the number of Plaintiff's borrowers who filed for bankruptcy relief over the past two years;<sup>1</sup> (2) the net profits from Plaintiff's credit card operations over the past two years;<sup>2</sup> and (3) the number of unsolicited credit card offers Plaintiff has mailed over the past two years. In response to Defendant's requests for documents, Plaintiff refused to produce roughly half of the requested material on the basis of proprietary interests. Requests were made for documents specifically regarding Defendant, as they pertained to Plaintiff's decisions for accepting or rejecting charges,<sup>3</sup> establishing credit limits, revoking permission to use the credit card,<sup>4</sup>

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<sup>1</sup> Plaintiff objected to this request on the basis of both proprietary interests and that the information is not readily available.

<sup>2</sup> Plaintiff also noted that such a determination would depend upon the adoption of many assumptions.

<sup>3</sup> Plaintiff objected to this request on the basis of both proprietary interests and irrelevance, noting that charges made by Defendant were never rejected.

<sup>4</sup> Plaintiff objected to this request on the basis of both proprietary interests and irrelevance, noting that Defendant's permission to use the card was never revoked.

and evaluating credit-worthiness. Additionally, Plaintiff refused to produce documents relating to its policies for all consumers and potential borrowers, as they pertain to credit-granting, credit-worthiness, accepting and rejecting charges and cash advances, and the filing of Section 523 objections to discharge of debt.

Defendant asserts that the relevance of the material to Plaintiff's allegations outweighs any prejudice or damage that Plaintiff would experience by release of the information.

### **III. Applicable Law and Discussion.**

Discovery is governed by Rule 26 of the Federal Rules of Civil Procedure, made applicable in this matter by Fed. R. Bankr. P. 7026. The scope of discovery includes information pertaining to any matter, not privileged, which is relevant to the subject matter of the action. Fed. R. Civ. P. 26(b)(1).

Rule 26 provides in relevant part:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . . The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1).

Pretrial discovery is generally “accorded broad and liberal treatment” as a result of this language. *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993), quoting *Hickman v. Taylor*, 329 U.S. 495, 507, 67 S. Ct. 385, 392, 91 L.Ed. 451 (1947). The underlying doctrine for the broad scope of Rule 26 is related to the “integrity and fairness of the judicial process” as it pertains to “promoting the search for the truth,” and unless a claim of privilege applies, a party may be compelled to respond to discovery requests. *Shoen* at 1292. In general, a request for discovery should be considered relevant unless it is clear that the information sought “can have no possible bearing upon [the] subject matter of the action.” *Paulsen v. Case Corporation*, 168 F.R.D. 285, 287 (9th Cir. 1996), quoting *Jones v. Commander, Kansas Army Ammunitions Plant*, 147 F.R.D. 248, 250 (D. Kan. 1993).

The threshold question in this matter, then, is whether the information requested is relevant to the issues in this action and therefore subject to discovery. Defendant’s requests pertain to Plaintiff’s policies with regard to both Defendant and all borrowers or potential borrowers of Plaintiff, as well as how Plaintiff conducts its business in terms of its number of borrowers and net profits. While requests for information specific to Defendant appear to easily fall within the scope of discovery, those requests not specific to Defendant

are less obviously related. The more generalized information is not, however, beyond the broad scope of Rule 26 because it is reasonable to conclude that the information may at least lead to admissible evidence. Additionally, this Court recognizes that the party requesting the information is in a better position to know how that information may be utilized in preparing materials for trial. *Soto v. City of Concord*, 162 F.R.D. 603, 610 (9th Cir. 1995). All of the information requested by Defendant is, at least generally, relevant to the subject matter of the case and therefore subject to discovery.

Discoverability of relevant information is tempered, however, by a claim of privilege which will exclude or limit the release of material otherwise discoverable under Rule 26. Fed. R. Civ. P. 26(b)(1). Objections to disclosure of such material should be made expressly and should describe the “nature of the documents . . . in a manner that . . . will enable other parties to assess the applicability of the privilege . . . .” Fed. R. Civ. P. 26(b)(5). Plaintiff has offered no authority to support its claim of privilege and this Court has found no established privilege with regard to credit-granting information by credit card companies. Assuming a privilege is available for such information, Plaintiff has nonetheless failed to describe the nature of the documents in a manner that

would enable this Court to assess the applicability of the privilege for this particular matter. Fed. R. Civ. P. 26(b)(5).

The discovery rule also provides an opportunity for a party to seek a protective order to prevent or limit discovery upon a showing of good cause, and where the moving party has made a good faith effort to resolve the matter with opposing counsel before involving the court. Fed. R. Civ. P. 26(c).

Subsection (c)(7) specifically applies to trade secrets and other confidential research. To resist discovery under this section, a party would first have to establish that the information sought is a trade secret or other confidential research and then demonstrate to the court that its disclosure could be harmful. *In re Worlds of Wonder Securities Litigation*, 147 F.R.D. 214, 214 (9th Cir. 1992). The burden would subsequently shift to the party seeking discovery to establish that disclosure of the information is necessary to the action, and outweighs the need to keep the information confidential. *Id.* Plaintiff has filed no such motion in this action and the Rule does not expressly authorize, nor is this Court inclined, to address the issue *sua sponte*.

#### **IV. Conclusion.**

The information Defendant requested is relevant under Rule 26. Plaintiff has offered no effective claim of privilege to except the information from discovery. Further, Plaintiff has filed no motion for a protective order, or satisfied the elements of such a motion allowing this Court to meaningfully weigh the need for the information against the need to limit discovery.

For these reasons, Defendant's Amended Motion to Compel Discovery will be granted by separate order.

DATED This 14th day of June, 1999.

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JIM D. PAPPAS  
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

Matthew R. Cleverley, Esq.  
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ADV. NO.: 99-6034

CAMERON S. BURKE, CLERK  
U.S. BANKRUPTCY COURT

DATED:

By \_\_\_\_\_  
Deputy Clerk